

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MBODY MINIMALLY INVASIVE SURGERY, P.C.,  
NICK GABRIEL, D.O., JODIE BREWER and ERIN  
NASTRO,

Plaintiff,

Civil Act. No.: 14-cv-2495(ER)

-against-

UNITED HEALTHCARE INSURANCE  
COMPANY, UNITED HEALTHCARE OF NEW  
YORK, UNITED HEALTHCARE SERVICE, LLC,  
and UNITED HEALTHCARE SERVICES, INC.,

Defendants.

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**DECLARATION  
OF JEFF POGANY**

JEFF POGANY, pursuant to 28 U.S.C. §1746(2), being duly sworn, deposes and states under  
penalty of perjury:

1. I am employed as the Director, NY Network Contracting for United HealthCare Insurance  
Company of New York (“United”). In connection with my job duties, I have access to and have  
undertaken a review of United’s contracting file relevant to this litigation. This Declaration is based on my  
personal knowledge.

2. I submit this Declaration and the exhibits annexed hereto in support of Defendants’ order to  
show cause for a temporary restraining order and preliminary injunction preventing Plaintiff and their  
counsel from contacting Defendants and Defendants’ Members regarding the subject matter of this  
litigation.

3. In 2011, I was Manager, Physician Contracting for Suffolk/Nassau/Richmond. In that  
position, I was responsible for United and Oxford’s commercial lines of business.

4. I do not have, and never had, any involvement with the administration of the New York State Empire Plan provider network of the Empire Plan's provider contracts or any of the agreements existing under that plan. I do not have, and never had, any authority to bind or act on behalf of the Empire Plan.

5. Annexed hereto as Exhibit "2" is a true and correct copy of the Physician Contract executed by Nick H. Gabriel, D.O. and dated July 7, 2006.

6. Annexed hereto as Exhibit "9" is a true and correct copy of a letter dated December 13, 2011 I received from Attorney Thomas Force.

7. Annexed hereto as Exhibit "10" is a true and correct copy of my email response to Attorney Force sent December 16, 2011. I was not aware that Dr. Gabriel maintained a separate agreement with the Empire Plan at the time I sent my email. I do not have access to the Empire Plan's contracts.

8. Annexed hereto as Exhibit "24" is a true and correct copy of a letter and enclosure I received that was directed by Dr. Gabriel's office to his patient dated September 10, 2014. The Member's name was redacted to protect the Member's protected health information from disclosure.

Dated: October 16, 2014

I declare under penalty of perjury that the foregoing is true and correct.



JEFF POGANY